

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JENNIE COURTNEY, ETC.,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No.: 2:06-CV-00600-MHT
)	
ANTHONY CLARK, et al.,)	
)	
Defendants.)	

HOLLIS & SPANN, INC.'S
MOTION TO EXTEND EXPERT WITNESS DEADLINE

Comes now the defendant Hollis & Spann, Inc. ("Hollis & Spann") and files this motion to extend its expert witness deadline and as grounds therefor states as follows:

1. On August 9, 2006, the parties conducted a telephone Rule 26(f) meeting of the parties to discuss deadlines and discovery for this case and submitted their report of the parties planning meeting (Doc. 18). On August 21, 2006, this Court entered its Uniform Scheduling Order, which among other deadlines, instructs the plaintiff to identify experts and provide Rule 26 reports by March 1, 2007 and the defendants by April 2, 2007 (Doc. 21; Section 8). The Uniform Scheduling Order also provides that "[a]ll parties are expected to comply with each and every provision of this order in a timely manner, and extensions will be granted in only extraordinary and unforeseeable circumstances." (Doc. 21; ¶ 1).

2. The plaintiff failed to disclose her expert witness by March 1, 2007, the deadline set forth by the Uniform Scheduling Order of this Court. The plaintiff then filed an untimely motion to extend expert deadline (Doc. 78) on March 2, 2007.

3. On March 5, 2007, this defendant filed its objection to the plaintiff's motion to extend her expert deadline (Doc. 79).

4. Previously, on January 8, 2007, this defendant filed a meritorious summary judgment (Doc. 58) supported by a brief in support thereof (Doc. 59). This Court issued a show cause Order (Doc. 60), and the plaintiff filed her opposition and brief (Doc. 66). This defendant has subsequently filed a Motion for Leave to File a Reply Brief and Reply Brief (Doc. 70) and is simultaneously filing herewith a Supplement to its Motion for Summary Judgment. The defendant believes its motion for summary judgment is well founded and should be granted.

5. In the event, however, that the ruling on said motion is stayed, delayed, or otherwise not granted, the Uniform Scheduling Order requires that this defendant by April 2, 2007 "disclose the identity of ANY person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Federal Rules of Evidence, and provide the reports of retained experts or witnesses whose duties as an employee of the party regularly involved in giving expert testimony, required by Rule 26(a)(2) of the Federal Rules of Civil Procedure."

6. The plaintiff has offered no criticisms nor identified any expert to offer

opinion testimony regarding Hollis & Spann. The complaints contain no specific statements as to Hollis & Spann's alleged liability, and there has been no testimony or expert opinions offered for which rebuttal experts may be appropriate. Therefore, this defendant requests this Court, should it grant leave to the plaintiff to later name an expert witness, as to this defendant, to allow this defendant additional time to offer rebuttal experts as to any criticisms, if such is allowed. Hollis & Spann requests the Court to enter its motion for summary judgment, but out of an abundance of caution files this motion should the Court allow the plaintiff to later identify and offer expert testimony in any way affecting Hollis & Spann.

WHEREFORE, THE PREMISES CONSIDERED, this defendant requests that in the event that this Honorable Court has stayed, delayed, or otherwise fails to rule on this defendant's motion for summary judgment by April 1, 2007, that this Court **GRANT Hollis & Spann an extension of time within which to name its expert** as required by Rule 26(a)(2) of the Federal Rules of Civil Procedure and **give Hollis & Spann** a period of **thirty days** from the date that the plaintiff tenders her expert for deposition within which to name its expert.

Respectfully requested,

/s/Steven K. Herndon
STEVEN K. HERNDON (HER028)
Attorney for Defendant Hollis & Spann, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing was served on the following counsel of record by e-mailing and on the defendant inmates by placing a copy of same in the United States mail, postage prepaid and properly addressed this 29th of March, 2007:

<p>Attorneys for Plaintiff Mr. Britt V. Bethea Mr. J. David Greene, Jr. Mr. Will G. Phillips Greene & Phillips 50 N. Florida Street Mobile, AL 36607 Telephone: (251) 478-1115 Facsimile: (251) 471-3920 jdgreene@greenephillips.com wgphillips@greenephillips.com</p> <p>Attorney for Defendant Black Creek Integrated Systems Corp. Mr. Bert Pittman Taylor Taylor & Smith, PC P.O. Box 489 Orange Beach, AL 36561-0489 Telephone: (251) 981-8430 Facsimile: (251) 981-8425 cyk@taylorritter.com</p>	<p>Attorneys for Defendants Anthony Clark, Jerry Wayne Edgar, and Walter Inabinett Mr. Daryl L. Masters Mr. Gary L. Willford, Jr. Webb & Eley, PC P.O. Box 240909 Montgomery, AL 36124-0909 Telephone: (334) 262-1850 Facsimile: (334) 262-1889 rrobertson@webbeley.com gwillford@webbeley.com</p> <p>Attorneys for Dickey & Associates, Inc. Mr. Alan Thomas Hargrove, Jr. Mr. Richard Brett Garrett Rushton, Stakely, Johnston & Garrett, PC P.O. Box 270 Montgomery, AL 36101-0270 Telephone: (334) 206-3100 Facsimile: (334) 262-6277 ath@rsjg.com bg@rsjg.com</p>
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/s/Steven K Herndon
COUNSEL